



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200907049

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 19 2008

Uniform Issue List: 408.03-00

SE: T: EP: RA: T4

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXXXXX
Bank W = XXXXXXXXXXXXXXXXXXXXXXXX
Bank A = XXXXXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX

This is in response to your ruling request dated June 19, 2008, as supplemented by correspondence dated September 11, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted in support of the ruling requested.

Taxpayer A, under age 59 1/2, represents that he received a distribution on Date 1 from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was because he thought that he had 90 days in which to deposit Amount D into a new IRA account.

Taxpayer A asserts that IRA X, which was maintained at Bank W, matured on Date 1. On that day he decided to seek a better investment and withdrew Amount D in hopes of rolling it into another IRA with higher yields. On Date 2, Taxpayer A deposited the check into his checking account at Bank A. Taxpayer A states that he thought that he had 90 days in which to roll over Amount D. On Date 3, when Taxpayer A went to a bank to roll over Amount D into a new IRA, he was informed by bank personnel that the IRA funds had to have been rolled over within 60 days of the date Amount D was distributed.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

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Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information submitted in this case indicates that Taxpayer A withdrew Amount D from IRA X with the intent to redeposit such funds at a later time into another IRA that would yield a better rate of return. Taxpayer A's failure to accomplish a rollover within the 60-day period was due to his inadvertence in thinking that he had 90-days in which to roll over Amount D into another IRA.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and disability. Although there was a misunderstanding of the time period to complete a tax-free rollover, the ability to redeposit Amount D into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X and thus Amount D will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact XXXXXXXXXX, ID Number XXXXXXXXX at XXXXXXXXXX. Please forward all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

Donzell H. Littlejohn

Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose